apparent triumph, "The letter killeth," &c., without seeming to comprehend that the spirit without the letter is as truly dead as the letter without the spirit. In this life, surely, we must be content to live in the *body* and to go by the *letter*, remembering always that the soul and the spirit have no modes of action or expression except through the body and the letter. Every careful student of the common law, as administered in England and America, has had frequent occasion to observe the far more strict adherence to rules in the English courts than here, and to note, in consequence, the far greater certainty and stability of judicial administration there. Written constitutions exist only in the letter, and if that is disregarded or perverted, the thing for which our fathers expended so much is gone with it. There *is* a spirit, but it *dwells* only in the letter.

I. F. R.

Supreme Court of Pennsylvania.

THE COMMONWEALTH OF PENNSYLVANIA *ex rel.* JAMES BUCHANAN CROSSE *vs.* JOHN S. HALLOWAY, WARDEN OF THE EASTERN PENITENTIARY.

A pardon is an act of mere grace, and is not founded on any preliminary steps that furnish legal merits or a legal title.

The *intention* of the Executive to grant a pardon can have no legal force until carried into completed act. The completed act is the charter of pardon *delivered.*

By usage the delivery of a pardon to the warden of a prison is *primâ facie* equivalent to delivery, or is a constructive delivery to the prisoner, but it is open to be proved no delivery by showing circumstances that are inconsistent with the intention to deliver it.

A pardon procured by false and forged representations and papers is void.

Therefore, in a case where on the faith of a forged letter from the War Department, asking for a pardon, and stating that the prisoner was wanted for secret public service, a pardon was executed by the Governor and put into the hands of the United States Marshal, to be delivered to the prisoner on his performance of the service, and by the marshal delivered to the warden of the prison in order to obtain the release of the prisoner, *Held,* that this was not a delivery to the prisoner, notwithstanding the custom in Pennsylvania to deliver pardons to the warden of the prison to keep as his voucher.

Even had this been a delivery, the fraud in obtaining the pardon would have avoided it, although it was not shown that the prisoner had any hand in perpetrating the fraud.

Whether the statute 27 Edw. 3, c. 2, is in force in Pennsylvania, *quære?*

Habeas Corpus. The relator James Buchanan Crosse was convicted of forgery at the June Term 1860 of the Court of Quarter

Sessions of the county of Philadelphia, and sentenced to an imprisonment of five years in solitary confinement at labor in the State Penitentiary.

On the 12th December 1862, he presented a petition to the Hon. George W. WOODWARD, one of the justices of the Supreme Court, at chambers, for a writ of habeas corpus, which was allowed and made returnable before the Court in banc. The petition set forth the conviction as above recited and the commitment thereon, and also that on June 3d, 1862, his Excellency Andrew G. Curtin, Governor of the Commonwealth, had granted to the petitioner, under the great seal of the State, a full, free, and unconditional pardon for the said offence, and that the same was shown and delivered to the respondent the warden of the said penitentiary; further, that by reason of the said pardon the petitioner was released from confinement in the said penitentiary by the said Halloway, but was immediately thereafter taken by force and compulsion to the city of Washington, and that on June 5th, 1862, he was brought back to the city of Philadelphia, and by force and compulsion was redelivered into the custody of the said Halloway, by whom he was and still is illegally detained, &c.

On January 10th 1863, before the Court in banc, the respondent made return setting forth the commitment as above recited, and proceeding as follows:

"Respondent further says that true it is, that the Governor of the Commonwealth of Pennsylvania, on the 3d day of June, A. D. 1862, made out a pardon for the said J. Buchanan Crosse, which pardon was never delivered to said Crosse, but was placed in the hands of respondent on the 4th day of June, A. D. 1862, by William Millward, Esq., United States Marshal for the Eastern District of Pennsylvania. Respondent thereupon allowed said Crosse to be taken away by and in the custody of said William Millward, Esq.

"That said Millward, on the 5th day of June, A. D. 1862, returned the said Crosse to the custody of the respondent.

"That said Crosse remained in the custody of Marshal Millward until returned to the custody of respondent."

The return further set forth that the said pardon had been procured by certain forged letters from the Assistant Secretary of War, copies of which were annexed, that the said pardon was therefore void, and that the said Crosse was detained upon the original commitment.

Immediately upon the reading of this return, *Edward H. Weil*, Esq., on behalf of the relator, filed a traverse to that part of it which asserted that the pardon had not been delivered, and on the issue thus formed several witnesses were examined at the bar of the Court.

Eli Slifer, Esq., Secretary of the Commonwealth, was first called, and testified that some time early in June the Governor received a letter purporting to be from the Assistant Secretary of War, asking for the pardon of Crosse.

The next day United States Marshal Millward called and presented a recommendation for the pardon, signed by Collector Thomas and United States District Attorney Coffey, and stating that he was needed by the Government for some special service. On this letter the pardon was granted. The great seal of the State was attached. It was distinctly understood between the Marshal and the Secretary, however, that the pardon was not to be handed to Crosse until he had performed the service required of him by the Government.

The pardon was never enrolled, was never treated as a completed instrument. It was granted entirely on the letter to Governor Curtin from the Secretary of War. It is usual to insert in pardons the causes or suggestions for which they are granted, but it was omitted in this case, because the letter from the Assistant Secretary of War desired that no publicity should be given to them.

The Secretary was first informed of the forgery the day after the pardon was issued, by a despatch from Marshal Millward, saying that it was based on forged papers. The Secretary immediately telegraphed to the Marshal to return the prisoner to the penitentiary and return the pardon to him (the Secretary). It was distinctly understood that Crosse was not to know of the pardon, and it was not to be delivered to him until he had completed the service required of him by the Government.

Mr. *Weil* next offered in evidence a certified copy of the warden's Journal of the Penitentiary, in the warden's handwriting.

The object of the offer was to show that the pardon had been regularly entered on the journal, and that the prisoner had consequently been discharged from custody.

The offer was objected to by Mr. *Mann* and Mr. *Meredith*, on the ground that a memorandum, made by the warden, was not evidence in the case.

Chief Justice LOWRIE, after some little argument of counsel, said that the paper could be used when Mr. Halloway came in.

William Millward, Esq., United States Marshal, was called and testified that in June 1862, he received a letter as follows, purporting to come from the Assistant Secretary of War :—

"War Department, Washington City, June 1, 1862.

"William Millward, Esq., United States Marshal, Philadelphia, Pa.:

"Sir—The Secretary of War directs me to advise you of the receipt of a dispatch from the headquarters of the army to this department, with an urgent request that an immediate effort be made to send to that point the somewhat notorious forger, J. Buchanan Crosse, now an inmate of your State Prison, and to instruct you to proceed to Harrisburg, for the purpose of making a personal application to the Executive for his release, and to bring him to this city with the least possible delay.

"You will please communicate the contents of this note to United States District Attorney Coffey, Collector Thomas, and Postmaster Walborn, and request them to append their names with your own to the petition enclosed, which, with a copy of record of sentence, it is presumed will be sufficient, as this department has addressed a note to Governor Curtin, requesting his favorable consideration of the same.

"Crosse is to be sent over the lines for a specific purpose with a telegraph operator now in waiting at headquarters; and as the service will be attended with much personal peril, the Secretary of War is desirous that no publicity be given to the fact that the application for his release emanated from this Department, the knowledge of which, in case of accident, would be fatal to him, and defeat the purposes of his mission. You will therefore observe at a glance the propriety of avoiding any explanations whatever to the local authorities and prison officials, or even to Crosse himself, until he reaches this point.

"Your prompt attention will be duly recognised by this Department.

Very respectfully, your obedient servant,

P. H. WATSON, Assistant Secretary of War."

That this letter was franked as he supposed by the Assistant

Secretary of War; that the next morning he went to Harrisburg, following the directions of the letter in every particular; that he there found that the Governor had received a similar letter from the War Department, and that he then obtained the pardon from the Secretary of State, who gave it to him on the express understanding that Crosse was not to know anything of it, and it was not to be delivered to him until the service required of him had been performed.

That he then returned to this city, and going to the Penitentiary, presented the pardon to the warden, who permitted him to take Crosse away. On going to Crosse's cell, witness asked him if he would accompany him to Washington, saying that it might result to his benefit. Crosse said, "Yes, if it is not for another trial." The witness of course told him it was not for that purpose, and Crosse said, "Yes, I will go; I am pardoned." This the witness denied. The pardon was handed to the warden, with the express understanding that it was not to be known to Crosse, and no one in the prison was to be informed of his removal.

Crosse was taken to Washington by witness and Deputy Marshal Jenkins, and conveyed immediately to Secretary Stanton's office.

That explanation then ensued, and the Assistant Secretary was sent for, and the letter purporting to come from him to the Marshal was shown him. He thought it was in his handwriting, but had no recollection of writing such a letter. The franked envelope in which it was contained was then shown, and the forgery was detected by the frank being on a different side of the envelope from that on which it was customary to write it. It was franked as was the custom under Secretary Cameron.

That witness then had Crosse locked up for the night, and the next day brought him back to Philadelphia and redelivered him to the warden of the prison, as before stated.

Mr. *Weil* then proved the extract from the Warden's Journal, and read a section of an Act of Assembly requiring it to be kept.

The paper is as follows:—

"1862.—June. Delivered into the custody of United States Marshal Millward, under authority of a pardon from his Excellency

A. G. Curtin, Governor of the State, prisoner No. 4304, J. Buchanan Crosse (white), who has been here one year and nearly ten months.

"June 5. Prisoner No. 4304, J. Buchanan Crosse, was returned to custody by Marshal Millward about 6 o'clock this evening, by an order from Hon. Eli Slifer, Secretary of the Commonwealth, recalling the pardon, and directing him to be again returned to the Penitentiary, it appearing that the pardon had been obtained upon forged representations. The prisoner had never been out of custody, nor had any official notice of his pardon."

Mr. Halloway was then examined, and testified to the calling of Marshal Millward at the Penitentiary for Crosse, and the details of that interview, substantially the same as testified to by the Marshal. In addition, however, he stated that it was his custom, upon the discharge of a prisoner under a pardon, to exhibit it to him, and almost invariably to read it to the prisoner, to show upon what grounds his discharge was made; but, in reply to a question from Judge WOODWARD, he added that he would not have discharged him on a verbal statement of the marshal, and that he only discharged him on the exhibition of the pardon, and on no other ground. In reply to a question from Judge LOWRIE, the witness stated that he usually went to the prisoner and stated to him the fact of his pardon, had him dressed and brought to the office, where the pardon was exhibited and read. No other evidence than the pardon is ever required. The pardon is usually retained.

E. H. Weil, for the relator.—Where the king grants more or other things than he intends, but is not deceived by any matter suggested by the grantee, but is only mistaken in his own surmises, such grant is good: Viner's Abr. 17, 100; 1 Strobhart 162; 2 Wharton 453; 3 Johns. Cas. 333; 6 Watts 338; 8 How. Pract. Rep. (N. Y.) 316; 16 Peters 119; Shepherd's Touchstone 58; 5 Barn. & Cress. 692; 11 East 623; 5 Co. 49; 4 Blackst. Com. 402; 5 English 224; 18 How. 307; 1 Cranch 137; 9 Casey 283; Hawk. P. C. 532, 538; Foster's Crown Law 284; 1 Chitty Cr. Law 765; Cowp. 334; 1 Leach 118; *Ahl's Case* (Pa.), not reported.

Hon. *W. M. Meredith*, Attorney-General, with whom was *William B. Mann*, District Attorney, for the respondent.—By the common law, every charter or patent issued on false suggestion was voidable by the Crown, and could be repealed on *scire facias*. This applied to charters of pardon: *Howard's Case*, T. Raym. 13.

The law presumes that the charter was granted by reason of the suggestions made by those who applied for it, and that these suggestions directly or indirectly came from the grantee, and these are *præsumptiones juris et de jure*, and cannot be contradicted. In other words, a grant obtained by false suggestions from the public authority, may for that reason be avoided, whether the false suggestions were or were not in fact made by the party benefited by the grant.

Thus the law would stand on a *scire facias*. But that being found an insufficient remedy, as the criminal would have an opportunity to escape before a trial could be had, the statute of 27 Ed. 3, c. 2, was passed, not to alter the *law*, but to give a necessary jurisdiction in a speedier form.

That statute contains but two new provisions. The first is directory, viz., that henceforth the charter of pardon shall set forth the suggestion, where it shall be granted at "any man's suggestion." The second provision is, that if the justices before whom such charter is alleged, shall find the suggestions to be untrue, they shall disallow the charter.

This Act, like the common law, does not require that the making of the false suggestion shall be traced to the party; it expressly speaks of "any man's" suggestion. Nor does it make it the duty of the justices to inquire into the truth of only the suggestions recited in the pardon, for it commands such inquiry to be made "as well of charters granted *before this time*, as of charters which shall be granted in time to come." Before the passage of the Act, there had been no direction that the suggestions should be recited in the charter. As this statute did not alter the law, but merely gave a more effectual form of proceedings necessary to prevent great public evils, and as it is entirely suitable for us, in every respect, there can be no doubt but it is in force. The cases cited

on the argument show that statutes have been so held to be which were never actually enforced (no occasion having arisen) till a very recent period. In fact, the Act of 1722 gave to the Supreme Court all the powers and jurisdiction of the King's Bench and Common Pleas, and this was one of them. The statute in question created no new law on the subject, but merely gave jurisdiction in a new form. This statute may therefore be considered as expressly adopted by our Act of 1722.[1]

Weil, in reply.—The Statute Ed. 3 is not reported as in force in Pennsylvania. If it ever was in force, it is repealed by the Constitution, which does not require the Governor to give his reasons for a pardon. Parol evidence cannot be given to vary or control the pardon. The inducement alleged in the pardon is the petition from the Marshal and others. There is nothing about the letters. The false suggestions must appear on the face of the pardon, and they must be shown to proceed from the grantee.

The opinion of the Court was delivered by

LOWRIE, C. J.—There are charters or patents for new inventions, for lands, for grants of corporate privileges, and as commissioners of public affairs, as well as those of pardons; and though all these have a strong likeness as to their form and to the source whence they immediately proceed, yet they have also some marked points of unlikeness, that warn us to be cautious about confounding the rules that belong to any one kind with those of another. We notice here only the distinction that is important for this case. With us, those that relate to new inventions, to lands, to corporate privileges, and to offices, are usually only the last step in the process by which certain rights become completely vested; and when all the preliminary steps are regular and complete, this last step becomes a mere ministerial duty definitely prescribed by law, and the claimant has a right to demand that it shall be taken because he has performed all the conditions upon

[1] We regret that no memorandum of cases cited by the Attorney-General could be found in the office of the Court. There were no paper-books printed in the case.—EDS. A. L. R.

which the law has made his title to it to depend. Then the appropriate charter becomes a vested right and the withholding of it a civil injury, which may usually be redressed in some form of law; and in some cases the matter may be treated as if the charter had been actually delivered, though the fact be otherwise. These instances bear a strong analogy to sales of land where all the terms have been performed by the purchaser, and the conveyance alone is wanting, or where a deed has been delivered in *escrow*, and all the conditions of final delivery have been performed. The equity of the law often dispenses with such final acts of investiture of title as are, in their nature, only formal.

But charters of pardon are entirely different from these, in the conditions on which they depend; for (not to speak of those which are issued in pursuance of promises, by proclamation or otherwise, of executive clemency) they are forwarded on mere grace, and not at all on any preliminary steps that furnish legal merits or a legal title to them. The *intention* of the executive to grant a pardon can have no legal force until carried into completed act. And his instructions to his proper officers, and their work in pursuance of his instructions, are only the means by which he embodies his intentions into the completed act, and have no force out of the executive sphere until thus completed; though the Courts may, when the intention is satisfactorily shown, suspend further proceedings in expectation of the actual pardon, as has been sometimes done in England. The completed act is the charter of pardon and *delivered.* This is the one and only step that gives title to a pardon. Until delivery, all that may have been done is mere matter of intended favor, and may be cancelled to accord with a change of intention.

Was this pardon delivered? In the strictest sense, no; for the grantee of it never saw it or had it in his possession. But in a less strict sense, yes; for it was delivered to the warden of the prison, and this has been with us usually treated as a delivery, the charter of pardon having come, by a somewhat loose practice, to be considered as the warden or keeper of the prison's voucher for the discharge of the prisoner, rather than what it truly is, the

prisoner's title to the pardon of his offence and to his discharge from all the consequences of his conviction.

We say this practice is somewhat loose, because it takes away from the grantee his title to his pardon, and throws upon the warden the responsibility of judging of its sufficiency. We do not condemn the practice, because ordinarily it works very well, and because the strict ancient practice that required the prisoner to sue out a *habeas corpus* from the Court of King's Bench (Supreme Court here), in order that he might appear and plead his pardon, and have it allowed there, would be very inconvenient with us. If this strict practice were pursued, the prisoner could not get his discharge without the judgment of the Court on the sufficiency of his pardon, and it seems very proper that he should gain no advantage by this loose practice, beyond exemption from the inconvenience of the stricter practice.

But we have not fully answered the question, was his pardon delivered? We think that by usage its delivery to the warden is *primâ facie* equivalent to delivery, or is a constructive delivery to the prisoner; but it is open to be proved no delivery by showing circumstances that are inconsistent with the intention to deliver it. The circumstances shown here are, that the Governor issued the pardon as a means of putting the prisoner into the hands of the United States Marshal, and through him into the hands of the War Department at Washington, for the performance of some service to that department; that it was delivered to the Marshal to be used for that purpose, and not to be used as a pardon unless the prisoner would consent to go for that purpose, and was not enrolled; that the prisoner was not informed of his pardon, but consented to go to Washington, and was taken there by the Marshal, who there learned that the Governor and he had been imposed upon by forged letters as from the War Department, and no service was wanted from him, and the prisoner was thereupon brought back by the Marshal on the next day without having been out of his custody, and immediately returned to his cell in the Penitentiary; and the entry on the warden's books is in accordance with this, that he was delivered into the custody of the Marshal under the

authority of the pardon, and on the next day returned. By order of the Secretary of the Commonwealth the pardon was sent back to him.

We have already found a constructive delivery, independent of circumstances; do the circumstances just related change the result or forbid such a finding? We think they do. The intention of the Governor was to accommodate the War Department, by allowing it to obtain the services of the prisoner, and the intention to pardon was only an incident of this, and dependent upon it. There was no intention to pardon except for the purpose of meeting a supposed request of the War Department for the services of the prisoner, and when this turns out to be entirely without foundation, there can be no reason for attributing any efficiency to the subordinate and dependent intention. Judicial constructions, like judicial fictions, are designed to further and not to frustrate equity and justice, and can never prevail against manifest right and justice, and the prisoner has no sort of merits in law or equity on which to base a claim that this pardon was constructively delivered or constructively vests in him any right. A delivery of goods to a carrier is usually a constructive delivery to the consignee, but not so if it be induced by mistake or fraud; at least not irrevocably so.

True, the prisoner was taken out of the Penitentiary by means of the pardon; but he was not discharged under it, else he would have gone free and not have been brought back. He was not intended to be discharged, except to enter upon the expected service, and he has no equity to claim that the mistaken delivery to the marshal shall stand for a discharge on a complete and valid pardon. The most that could be made of it would be that this was the application of the form of a pardon to an unauthorized purpose, and that his delivery to the Marshal was a voluntary or an involuntary escape, neither of which is equivalent to a pardon.

We think, also, that this pardon is void because of the false and forged representations and papers that were used in procuring it from the Governor. We do not feel entirely prepared to assent to that part of the argument of the Attorney-General which would

base this conclusion on the Statute 27 Ed. 3, c. 2, 1 Ruff 273, because we are not entirely satisfied that that statute has been received as part of our law. We prefer leaving that question open for future consideration. But we think the principles of the common law demand this conclusion, and they have a rather wider extent than the provisions of this statute.

By the statute a pardon is to be disallowed by the Judges of their own motion, if any of the suggestions contained in it appear to be false; but by the common law all charters and patents may be avoided if based on any false suggestion, whether the suggestions be contained in them or not. This question, however, can be raised only at the instance of the Attorney-General, as the law officer of the Executive, for it would be quite indecent that any other person should raise it, unless under some carefully prepared statutory regulation. Such a question may be raised by a *scire facias* to repeal the charter; but it may also be raised on *habeas corpus* issued to allow the prisoner to plead his pardon; for the Commonwealth is a party to that proceeding, and the Attorney-General may appear and answer the plea, by showing the false suggestions on which the pardon was obtained.

Here the falsity of the suggestion is very plain. True, there is no falsity in the suggestion specified in the pardon. But this is fully accounted for. The suggestion that is recited contains only the general reason of public expediency, because the special grounds of that expediency were to be kept secret. The forged letters to the Governor and Marshal suggested that the prisoner was needed for some secret, public service, and that, as this could not be recited in the pardon, an application should be made that should specify only general considerations, so that the pardon might be founded on that without naming the letters.

We do not feel the force of the objection that the prisoner does not appear to have had any hand in the forging of the letters. He can claim nothing as a favor that is founded on the fraud of his friends, so as to prevent the frustration of the fraud. Any person may reclaim the rights out of which he has been cheated, until they come into the hands of a third person, who is a *bonâ fide*

purchaser for value, without notice of the fraud. And so may the Commonwealth. The prisoner has no merit of his own that is sufficient to override the fraud of his friends in this matter. When he shows that he has he will, no doubt, get a new and honest pardon. He has no better title to this pardon than a consignee of goods would have after the goods had been stopped in transitu, on the discovery that the sale and delivery had been procured by letters forged by the friends of the consignee.

The prisoner is remanded.

1. A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. If rejected by the person to whom it is tendered there is no power in a court to force it on him, and this rule must be the same in capital cases as in misdemeanors: United States *vs.* Wilson, 7 Pet. S. C. 150.

It appears, however, that strict form in the charter itself will not be insisted upon. Thus an instrument in writing, issued by the President under the seal of the United States, directing a person sentenced for robbing the mail to be forthwith released from prison, imprisonment being the only punishment inflicted by his sentence, was held to be a pardon: Jones *vs.* Harris, 1 Strobh. 160.

2. The Constitution of the United States, art. 2, sect. 2, gives the power to pardon "offences against the United States, except in cases of impeachment," to the President, in analogy to the common law, which vested that power in the King as the supreme executive head of the government. We adopt the English principles in regard to pardons. MARSHALL, C. J., in United States *vs.* Wilson, *ut sup.* The language of the Constitution in reference to pardons must be construed by the meaning in England and in the states at the time of the adoption of the Constitution: WAYNE, J., in Ex parte Wells, 18 How. 307. Most of the states have inserted similar provisions in their constitutions, though the power of the Governor is in many of them restrained by various conditions relating either to the offences themselves or the manner in which pardon for them may be granted. Thus in many states treason (and in some murder) is excepted, as well as cases of impeachment, the power to pardon for these offences being generally lodged with the legislature; in some states the Governor is obliged to set forth his reasons in writing, and to make a report of all pardons to the legislature. Subject to these limitations, the power to pardon extends to all cases of offences against the public or the state. As a general principle, however, this does not include cases where private justice is principally concerned in the prosecution of offenders. Therefore it is said that a common nuisance cannot be pardoned while unredressed, or so as to prevent an abatement of it, because it is more in the nature of a private injury to individuals, than a public wrong: 2 Hawk. P. C., ch. 37, s. 33. Nor can a pardon remit the portion of a penalty or costs that go to a third person: United States *vs.* Lancaster, 4 Wash. C. C. 64; State *vs.* Williams, 1 N. & M. 26; Ex parte McDonald, 2 Whart. 440; Rucker *vs.* Bosworth, 7 J. J. Marsh. 131; Rowe *vs.* The State, 2 Bay 565. Upon this prin-

ciple also, it was much questioned whether the pardoning power extended to cases of contempt. Mr. Berrien, Attorney-General, thought it would not (March 17th 1830): 2 Opin. A. G. 329; but it is now well settled that it does. H. D. Gilpin, Attorney-General (February 27th 1841), 3 Opin. A. G. 622; J. Nelson, Attorney-General (April 15th 1844), 4 Opin. A. G. 317; Ex parte Hickey, 4 Sm. & Marsh. 751.

3. There has been much discussion as to the power of granting conditional pardons. In some states special provision is made in the constitution or the statutes, but the general doctrine, upon the principle that the greater power includes the lesser, is that the power to pardon absolutely includes the power to pardon conditionally. A pardon, it is said, is an exercise of sovereign clemency towards the guilty, not of justice to the innocent. Therefore, a full restitution or compensation for suffering is not necessarily contemplated: Cook *vs.* Middlesex, 2 Dutch. 326. The best discussion of conditional pardons will be found in Flavell's Case, 8 W. & S. 197, where SERGEANT, J., says, "The Governor may annex to a pardon any condition, whether precedent or subsequent, not forbidden by law, and it lies on the grantee to perform it. If he does not, in case of a condition precedent the pardon does not take effect; in case of a condition subsequent the pardon becomes null; and if the condition is not performed, the original sentence remains in full vigor and may be carried into effect." This is cited and approved by the Supreme Court of the United States, in Ex parte Wells, 18 How. 307, where it is expressly decided that the President may grant a conditional pardon to a person under sentence of death, offering to commute the sentence to imprisonment for life. And it cannot be considered that such pardon was accepted by the prisoner under duress. Id., MACLEAN, J., dissenting.

In some cases, however, the conditions have been held void. Thus a condition to submit to bodily labor for three years; was held illegal and the pardon absolute: Commonwealth *vs.* Fowler, 4 Call. 35. And a clause in the pardon declaring that it is not intended to relieve from the legal disabilities arising from conviction and sentence, was held repugnant, and not to prevent the person from being a competent witness: People *vs.* Pease, 3 Johns. Cas. 333. But in Perkins *vs.* Stevens, 24 Pick. 277, it is said the case of People *vs.* Pease stands alone on the point of repugnancy.

So strictly was a pardon construed, that where the condition was that the prisoner "should leave the state of Arkansas without delay," and it was proved that he had left but returned within five months, it was held that the condition had been performed and the pardon was absolute: Ex parte Hunt, 5 Eng. 284.

The general principle would appear to be that a pardon is the remission or mitigation of a penalty, and includes under the latter title, the substitution of any punishment which the court might have inflicted for a lesser degree of the same offence. Some cases, however, have gone much beyond this. Thus although banishment was not recognised by any law as a punishment, yet a condition that the criminal should leave the United States and not return was held legal: People *vs.* Potter, 1 Parker C. R. 47. And it is said "there can be no other limitation to the power than that the condition shall be possible, moral, and legal." State *vs.* Smith, 1 Bailey S. C. 281; State *vs.* Addington, 2 Id. 516.

4. By the common law "wherever it may reasonably be presumed the King is deceived, the pardon is void." 4

Blackst. 400; 2 Hawk. P. C. b. 2, c. 37, s. 8, *et seq.* This has been held with great strictness. Thus the defendant was sentenced and afterwards a writ of error was allowed, which annulled the judgment; pending this a pardon was granted, and afterwards the judgment was affirmed in the superior court, held that the Governor being misinformed, there being no sentence in force at the time, the pardon was void and the court must sentence on the new judgment: State *vs.* McIntire, 1 Jones (Law) N. C. 1. In this case it was said that it appeared from the record and the pardon itself that the Governor was misinformed; and it has been contended that this is the proper general principle, that errors to avoid the pardon must appear on the face of it. In the case before us, however, this point is expressly decided to the contrary, upon the principles of the common law.

5. In regard to the manner in which pardons may be taken advantage of, it is said that a pardon by act of parliament is more beneficial than by the King's charter, for the court must take judicial notice of it: 4 Blackst. Com. 401. But this applies only to a *general* pardon, for a special pardon by act of parliament would still be only a private act, which must be pleaded. And it is presumed that the same law would obtain here in those cases where pardons are granted by the legislature, though the point does not appear to have arisen. In regard to other pardons, it is said that they should be brought "judicially before the court by plea, motion, or otherwise." U. S. *vs.* Wilson, 7 Pet. S. C. 150. In Pennsylvania a different practice has obtained, as appears by the principal case. Where a pardon, however, is offered in evidence, the charter itself or a certified copy must be produced, or its loss accounted for: Spalding *vs.* Saxton, 6 Watts 338; Cox *vs.* Cox, 2 Casey 375.

6. The effect of a pardon is to acquit the offender of the penalties annexed to his conviction, and to give him a new credit and capacity. It cannot, however, divest any person of any right or interest which the law had permitted to be acquired and vested in consequence of the judgment. Therefore, a pardon of one sentenced to imprisonment for life does not annul the second marriage of his wife nor the sale of his property by the persons appointed to administer his estate, nor divest his heirs of their interest in his estate: Denning's Case, 10 Johns. 232. But it does restore him to his relation of father, and there cannot be any intervening right to defeat it. Id. A pardon restores competency as a witness, but the conviction may be used to affect his credibility: Baum *vs.* Clause, 5 Hill 196. But whether a pardon of the "remainder" or "residue" of a sentence will restore competency, is not settled. The Supreme Court of Pennsylvania holding that it will: Hoffman *vs.* Coster, 2 Whart. 453; and the Supreme Court of Massachusetts that it will not: Perkins *vs.* Stevens, 24 Pick. 277. A pardon, however, is only for the offence named. Thus a pardon of an assault, which by subsequent death of the person assaulted becomes murder, will not be a pardon of the latter crime: Shaw, C. J., in Commonwealth *vs.* Roby, 12 Pick. 508; Hawkins *vs.* The State, 1 Porter (Ala.) 475.

A discharge from prison under a pardon is a discharge "in due course of law," rendering the convict liable to an additional sentence under the Massachusetts statute of 1832, c. 73, if recommitted: Evans *vs.* Commonwealth, 3 Met. 453. J. T. M.